

# STATE OF KANSAS CONRAD STATE 30 J-1 VISA WAIVER PROGRAM



Information on the J-1 Visa Waiver Program may be found at  
[http://www.kdheks.gov/olrh/j-1visa\\_waiver\\_overview.htm](http://www.kdheks.gov/olrh/j-1visa_waiver_overview.htm)  
Questions regarding the Program should be directed to [primarycare@kdheks.gov](mailto:primarycare@kdheks.gov).

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## CONRAD STATE-30 J-1 WAIVER PROGRAM OVERVIEW

Exchange visitors who are subject to, but do not wish to comply with, the two-year home country residence requirement may apply for a waiver of that requirement under any of the four grounds set forth in the Immigration and Nationality Act, Section 212(e):

- Exceptional hardship to a United States citizen (or legal permanent resident) spouse or child of an exchange visitor;
- Persecution if forced to return to home country;
- A statement supporting a waiver from an interested U.S. government agency; or
- A statement supporting a waiver from a state department of public health or its equivalent. (Only foreign medical doctors who received their J-1 status to pursue graduate medical education or training may apply for a waiver under this basis.)

The Kansas Department of Health and Environment Division of Health (KDHE) is the designated state health agency recommending waivers through the J-1 Visa Waiver Program (also referred to as the Conrad State 30 Program). KDHE is able to recommend up to 30 waivers per Federal Fiscal Year (October 1 through September 30) on behalf of physicians holding J-1 visas. The Office of Primary Care and Rural Health within the KDHE Bureau of Community of Health Systems, is responsible for the overseeing the J-1 Visa Waiver application process.

### ***Key Steps of J-1 Visa Waiver Application Process***

Application submitted to the Kansas Department of Health Environment requesting that the state act as the interested governmental agency in support of the waiver request.

Once reviewed and approved, a recommendation letter supporting J-1 Visa Waiver Application will be signed by the KDHE State Health Officer.

The J-1 Visa Waiver Recommendation Letter along with the J-1 Visa Waiver Application is submitted by KDHE to the U.S. Department of State (USDOS) for a secondary review.

The USDOS determines its recommendation and forwards the application to the United States Citizenship and Immigration Services (USCIS) for final approval.

## PRIORITIZATION AND ALLOCATION OF J-1 VISA RECOMMENDATIONS

### ***J-1 Visa Waiver Slot Determination***

The Kansas J-1 Visa Waiver program focuses on primary care and meeting emergency medical systems and chronic care needs of the underserved populations. Non-primary care specialists may also apply. Priority will be given in the following order.

1. Tier 1, Primary Care: Physicians specializing in Family Practice, General Internal Medicine, General Pediatrics, Obstetrics/Gynecology, Emergency Medicine or Psychiatry; and will be working in outpatient ambulatory care setting.
2. Tier 2 Specialty: Physicians specializing in a primary care specialty (listed above) and will be serving in the capacity as a Hospitalist. Physicians who are board certified in a non-primary care specialty directly related to the management of time critical diagnoses (STEMi, Stroke, and Trauma).
3. Tier 3 Specialty: Physicians specializing in all other specialties, with preference to specialties that directly supports the coordination of care for patients with chronic disease (e.g., diabetes, heart disease).

At the start of each new cycle, the availability of Kansas J-1 waiver recommendations will be allocated according to the following table.

		July 1 to December 31
Practice sites located in communities with less than 40 people per square mile	All Tiers	At minimum 10 slots reserved
Practices sites located in communities with 40 or more people per square mile	Tiers 1 and 2	At minimum 10 slots reserved
	Tier 3	No minimum slot reserved

Should all Kansas's allotment of J-1 waiver recommendation slots not be committed during the timeframe July 1 to December 31, remaining slots may be released following the table, below:

		January 1 to January 31	February 1 to February 28/29	March 1 to March 31	April 1 to June 30
Practice sites located in communities with less than 40 people per square mile	All Tiers	up to 6 slots remain reserved	up to 4 slots remain reserved	up to 2 slots remain reserved	vacant slots released
Practices sites located in communities with 40 or more people per square mile	Tiers 1 and 2	up to 4 slots remain reserved	up to 2 slots remain reserved	vacant slots released	vacant slots released
	Tier 3	No minimum slot reserved			

The employer's practice location(s) must be located in federally designated Medically Underserved Areas (MUA), or Medically Underserved Populations (MUP), or Health Professional Shortage Areas (HPSA) that has been designated or updated within the past four (4) years.

Kansas will use its authority to recommend up to ten (10) waivers each year for Tier 1 or 2 physicians to practice in areas that do not have the required federal shortage area designations for physicians.

The criteria used to determine eligibility will include the following

- Employer/facility serves medically underserved individuals that come from federally designated primary care health professional shortage areas (HPSAs); and
- Employer/facility has in place an established charitable/financial assistance policy with a discounted/sliding fee schedule for patients who qualify to ensure that no one who is unable to pay will be denied access to services.

(For further information, see “Employer Requirements” section.)

### ***Advance Notification Requirement***

KDHE must be notified of an entity’s intention to request J-1 Visa Waiver, in an advance of submitting the full application. This notification is made by submitting the “Advance Notification Request for J-1 Visa Waiver” form. This advance notification is used by KDHE to track applications and monitor availability of waiver slots. Should the number of waiver requests exceed the number of available slots, KDHE will use the Advance Notification Request for J-1 Visa Waiver information provided by the entity to determine commitments of J-1 Visa waiver slots. Once the Advance Notification Request for J-1 Visa Waiver form has been submitted, entities will have a fixed timeframe to submit the full application to KDHE as indicated in the table below. Should KDHE not receive the full application by the appropriate deadline, the J-1 Visa waiver slot will be released.

<u>Advance Notification Form Submission</u>	<u>Full Applications Submission Deadline:</u>
July 1 to September 30	December 15
October 1 to December 31	February 28
January 1 to March 31	May 15
April 1 to June 30	August 31

KDHE will begin accepting advance notifications in July of each year to request waiver slots for the new federal fiscal cycle starting in October of that same year. Advance Notification Request for J-1 Visa Waiver Forms will be accepted on a rolling basis, until such time when all available waiver slots have been commitment for the current federal fiscal cycle.

### ***Number of J-1 Visa Waiver Requests Allowable by Employing Health Facility/Campus***

Between July 1 and December 31, requests will be limited to two (2) per employing health facility/campus. After January 1, the health facility/campus may submit up to four (4) requests for consideration based upon availability of waiver slots as outlined on page 3. After March 15, should vacant waiver slots remain, additional requests by the health facility/campus may be submitted to be considered on a case by case basis.

## PHYSICIAN REQUIREMENTS

Pursuant to the requirements of Public Law 103-416, enacted October 25, 1994, to be eligible for the waiver, the foreign medical graduate must:

- Have an offer of full-time employment at a health facility in a designated health professional shortage area;
- Begin employment at such facility within 90 days of receiving the waiver; and
- Contract to work a total of 40 hours per week for not less than three years at the health care facility.

All J-1 Visa Waiver applicants must apply for a case number from the U.S. Department of State. This requires completing the online [Data Sheet](https://j1visawaiverrecommendation.state.gov/) through the U.S. Department of State (<https://j1visawaiverrecommendation.state.gov/>).

The J-1 physician must have or be eligible for a medical license from the [Kansas Board of Healing Arts](http://www.ksbha.org/) (<http://www.ksbha.org/>).

The J-1 physician is responsible for negotiating a contract with the employer to provide full-time care, 40 hours per week, at least 4 days per week, in the appropriate specialty for a minimum of three (3) years. (Refer to “Provider-Employer Contract Specifications” section for further specifications.)

By federal regulation, the J-1 physician must commence practice within 90 days of receiving a waiver. The U.S. Department of State and the U.S. Citizenship and Immigration Services will be notified if a J-1 physician is found not to have reported or not to be practicing medicine at least 40 hours per week in the location for which the recommendation was made.

KDHE must be notified when the J-1 physician does not report for duty. The employer and/or J-1 physician must notify KDHE of any breach or termination of contract. Transfers must be cleared with KDHE before the transfer occurs to confirm that the new area is also underserved.

Note: A former J-1 physician currently fulfilling his/her required three (3) year obligation may not serve as the employer of a new waiver candidate.

## EMPLOYER REQUIREMENTS

Any employer wishing to hire a physician is required to show that the practice has an open door policy with patients and sign an agreement to accept all patients regardless of ability to pay. The employer must:

1. Provide services to individuals regardless of their insurance type, ability to pay, or the individual's race, color, sex, national origin, disability, religion, age, or sexual orientation.
2. Charge for services at the usual and customary rates prevailing in the areas in which such services are provided.
3. Accept Medicaid, Medicare, and State Children's Health Insurance Program assignment rates, and provide free care when medically necessary.
4. Prominently post signage in its waiting room advertising the site does not discriminate in the provision of services.
5. Have a written nondiscrimination policy and provide services in a culturally and linguistically appropriate fashion responsive to the needs of the area's general population.

The employer's practice location(s) must be located in federally designated Medically Underserved Areas (MUA) or Medically Underserved Populations (MUP), or Health Professional Shortage Areas (HPSA) that has been designated or updated within the past four (4) years. Evidence should include the street address, zip code, telephone and fax numbers for the practice site. Facilities with an automatic facility HPSA (Rural Health Clinics or Federally Qualified Health Centers) are also eligible. Kansas does not require a minimum HPSA score or a specific facility type.

Federal law allows up to ten physicians in each state to work in regions not specifically designated as underserved by the Department of Health and Human Services. Employers not located in qualified designation and requesting a "FLEX" spot must:

1. Offer a sliding fee scale discount program based on the current Federal Poverty Guidelines to ensure that no one who is unable to pay will be denied access to service. The sliding fee scale discount program must include the following elements:
  - i. Be applicable to all individuals and families with incomes at or below 200 percent of the most current federal poverty guidelines/level.
  - ii. Provide full discount for individuals and families with annual incomes at or below 100 percent of the federal poverty guidelines/level, or allowance for a nominal charge only, consistent with the site's policy
  - iii. Adjust fees based on family size and income for individuals and families with incomes above 100 and at or below 200 percent of the federal poverty guidelines/level.
2. Prominently post signage in its waiting room advertising that discounts for essential services are offered depending upon family, size and income.

(For further information, see "Prioritization and Allocation for J-1 Visa Recommendation" section.)

Employers must provide assurance that employer has a formal agreement with the Kansas facility/practice to place each J-1 Visa physician at the facility/practice for three years. The written assurance must be signed by the employer and an authorized official with the Kansas facility/practice. In addition, KDHE may ask for the employer to supply additional supporting documentation validating this formal agreement between the employer and the facility/practice.

## DOCUMENTATION OF RECRUITMENT EFFORTS

KDHE policy is that a waiver recommendation by the state public health agency is a measure of last resort. The employer must show evidence of open recruitment. In the event that a physician not encumbered by the J-1 home residence requirement applies for and is qualified for the job advertised, he or she must be offered the position.

The employer is to provide the following information to describe the recruitment efforts:

- a. Length of time the entity has actively recruited for this position.
- b. Entity's current staffing levels in the specialty – number physicians employed and number of position open.
- c. Local, regional, and national venues utilized to advertise the open position
- d. The number of applicants have applied and interviewed for the position
- e. Indicate if any non J-1 physicians were offered the position and declined
- f. Indicate if any non J-1 physicians were interviewed and **not** offered the position. If yes, provide details of each US worker interviewed and the reasons an offer was not extended.

Employers requesting waiver for non-primary care specialty, physician (i.e. Tier 2 or 3) must also provide proof of regionally and nationally advertising used to secure a physician not bound by the 2-year home residence requirement.

Supporting documents should include sample/example of advertisements and/or copies of agreements with placement service that have been undertaken over a period of at least the six months. Please do not send copies of every advertisement. Documentation must include regional and national online or print advertising stating the position available and the practice site location, posted at minimum 3 months prior to the initiation of contract with J-1 Visa physician applicant.

## DOCUMENTATION OF UNMET NEED FOR HEALTH CARE SERVICES

The employer must include justification/evidence of unmet need if the J-1 Visa physician applicant's discipline is a non-primary care specialty (i.e. Tier 2 or 3) or if the employer is requesting a FLEX waiver slot (i.e. not located in a federal shortage area designation)

This statement of unmet need must be included in the employer's cover letter submitted in application and must include the following information.

- Description the community/population served by the facility or clinical site(s). Specified the approximate percentage of the population/patients seen by employer in its defined primary service area for each category listed:
  - a) Recipients of KanCare/State publicly funded assistance
  - b) Medicare beneficiaries
  - c) Uninsured
  - d) Low income (at/below 200% FPL)
- Quantifiable information the insufficient capacity of existing resources (locally or regionally) to meet the needs of the defined service area or underserved population.
  - a) Current specialist to patient ratio
  - b) Desired specialist to patient ratio:
  - c) Explain any staffing changes justifying the need for the physician's services (i.e. changes in staffing due to retirement, increased referrals, etc):
- (if applicable) Statement(s) regarding compliance requirements of accrediting bodies or state and national program guidelines in which the not filling of the vacant position will impact.

Employers requesting waiver for Tier 3 specialty physician position must also describe the consequences to the employer and the treatment of low income patients if physician is not approved for a Conrad waiver. At a minimum, two the below informational items should be addressed in the employer's case for the unmet needs in the defined service area or underserved population.

- The population to specialist ratio supporting the defined service area or underserved population (or other measures of underservice for the service area)
- Utilization data (e.g. number of procedures most commonly performed by specialty being recruited).
- Waiting times for referrals from safety net providers
- Estimate the percent of time the Conrad physician will spend providing inpatient care vs providing outpatient care.

The employer statement of need must contain documentation that the facility where the physician will practice has sufficient patients who live in designated shortage areas to support at least one Full Time Equivalent (FTE) physician of the specialty provided by the physician named in the waiver application.

For medical school teaching positions, one evidence source of need may consist of a letter from the Dean of the University of Kansas School of Medicine certifying that an essential faculty vacancy exists. For public health officer positions, one evidence source of need may consist of a letter from the KDHE State Health Officer certifying that an essential public health officer vacancy exists.



## ***Provider-Employer Contract Specifications***

For the statutorily-required three (3) years, there can be no changes to the contract that would result in the J-1 physician leaving the agreed-upon facility or ceasing to serve the patients he/she has agreed to serve in the manner agreed upon. It is recommended that each party have its own legal representation in preparation of the contract.

The contract must meet all of the following provisions:

- Initial term of contract must be for three (3) years, with guaranteed based salary.
- Contract must specify the field of medicine that the J-1 physician will be practicing and the complete physical address of this/her practice site locations.
- The physician's benefits (including health insurances) and leave allotment (annual, sick, continuing medical education, holidays) must be outlined in the contract.
- Contract must state the J-1 physician will practice a minimum of 40 hours per week, and when applicable, the 40 hour work week must compressed into no less than four days per week. (See details below.)
- Contract provisions must include the following two statements:
  - i. All amendments shall adhere to State and Federal J-1 visa waiver requirements.
  - ii. Physician agrees to begin employment within 90 days of receipt of J-1 visa waiver.
- Contract is signed by the physician and the head of the health care facility/employer. The date that contract was signed by each party should be listed in the contract.

In addition the contract terms and condition must meet the following guidelines:

- Physician may be terminated only with cause and cannot be terminated by mutual agreement until the statutorily-required three (3) years have expired.
- A non-compete clause or any provision that purports to limit the J-1 physician's ability to remain in the area upon completion of the contract term is prohibited.
- Contracts may not include any clauses that would require the J-1 physician to pay a sum to the employer for experience gained on the job or for the J-1 physician remaining in the area after the contract has ended.

### ***Physician's Work Schedule Requirement***

The Department of State requires a J-1 Visa physician to serve in the clinical practice of his/her profession full time, a minimum of 40 hours per week providing direct patient care at the approved practice site(s). For all medical disciplines, with the exception of physicians practicing Emergency Medicine or practicing as an Internist or Hospitalist, the 40 hour work week must compressed into no less than four days per week with no more than 12 hours in any 24-hour period. Time spent on-call does not count toward the 40 hour week. Hours worked over the required 40 hours per week will not be applied to any other work week.

## PHYSICIAN-EMPLOYER REPORTING REQUIREMENTS

The physician and the Chief Executive Officer of the employing entity must provide annual reports to the KDHE Waiver Review Program. It is the health facility's responsibility to submit the **Kansas Physician/Employer Reporting Form** to KDHE within the physicians first thirty (30) days of practice. The form is located on the KDHE website at: <http://www.kdheks.gov/olrh/j-1forms.html>. DO NOT SUBMIT this form with the waiver application. This reporting form report must be submitted every 12 months thereafter, until the three (3) year commitment is complete.

In agreements to serve in population-designated HPSAs, documentation must be submitted demonstrating that the relevant underserved population was indeed served. What constitutes adequate proof will vary depending upon the circumstances but should include a report of Medicare, Medicaid/KanCare and self-pay revenue, and the number of patients served by pay category, if available. When submitting the final report, the physician must indicate whether he/she intends to remain in the shortage area to practice. If a report is not submitted, penalties for default will be implemented.

KDHE will monitor provider practice and patient access, and follow up on any complaints that the practice refuses care to patients. KDHE may use Medicaid claims data and waiting times for referrals from safety net providers if necessary to monitor access concerns. Past compliance with the program guidelines will affect an employer's future eligibility.

### Penalties for Default:

Physicians - A letter to U.S Citizenship and Immigration Services with a recommendation for deportation. A letter of notification will be sent to the Kansas Board of Healing Arts.  
Employers - Restricted from submitting J-1 Visa Waiver applications for a period of two years.

***These requirements are subject to revision without prior written notice.***

## J-1 VISA WAIVER TRANSFERS

Once a Kansas J-1 Visa Waiver application is approved for a specific location, the J-1 physician cannot be placed at another location without KDHE approval. Movement of a J-1 physician to a location that has not been approved by KDHE will result in the physician being out of compliance with the program and may be reported to USCIS.

*\*\* Provide the U.S. Department of State J-1 visa waiver case number on all correspondence*

KDHE must be notified, in writing, of the J-1 physician's intent to transfer to another location along with the following information:

- Reasons for the transfer;
- The proposed new employer, practice site name, address, telephone number; and
- Proposed date of transfer.

The original employer must:

- Provide a letter releasing the J-1 physician from the employment contract; and
- Provide an explanation for termination.

The new employer must:

- Provide a letter of intent to employ the J-1 physician for the remainder of the obligation period;
- Agree to the terms that the J-1 physician will provide health services 40 hours per week;
- Provide a copy of the employment contract; and
- Provide a copy of the financial assistance policy and sliding fee scale;

Within 30 days of the transfer, the physician and the new employer must submit the [J-1 Visa Waiver Transfer Notification Form \(http://www.kdheks.gov/olrh/download/J-1NationalInterestWavierRequestForm.pdf\)](http://www.kdheks.gov/olrh/download/J-1NationalInterestWavierRequestForm.pdf) to:

Attn: J-1 Visa Waiver Review Program  
State Primary Care Office  
KDHE Bureau of Community Health Systems  
1000 SW Jackson, Suite 340  
Topeka, KS 66612-1365

## **APPENDIX 1:**

### **OVERVIEW OF STATE DEPARTMENT PROCEDURES**

The Waiver Review Division of the Office of Legislation, Regulation and Advisory Assistance in the Visa Office of the Bureau of Consular Affairs (formerly the USIA Waiver Review Branch of the Office of the General Counsel) reviews applications and makes recommendations to the U.S. Citizenship and Immigration Services concerning Section 212(e) waivers.

J-1 Visa Exchange Visitor Program information can be found on U.S. Department of State, Bureau of Consular Affairs website at: <http://travel.state.gov/content/visas/en/study-exchange/exchange.html>

If you have questions regarding waiver review procedures, please refer to one of the following sources of information:

**U.S. Department of State, Bureau of Consular Affairs, Visa Services:**

<http://travel.state.gov/content/visas/en/study-exchange/student/residency-waiver.html>

**U.S. Citizenship and Immigration Services:**

<http://www.uscis.gov/portal/site/uscis>

**Online Application Portal:**

<https://j1visawaiverrecommendation.state.gov/>

**Current Application Fee information:**

<http://travel.state.gov/content/visas/english/study-exchange/exchange.html#fees>

**Checking Waiver Application Status:**

<http://j1visawaiverstatus.state.gov/>

When the Waiver Review Division receives ALL required documentation, your case will be adjudicated. At the conclusion of the review process, the Waiver Review Division will forward its recommendation directly to the U.S. Citizenship and Immigration Service (USCIS) and you will receive a copy of that recommendation at the address listed on your data sheet. If your application is denied, you will be notified directly